

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 391 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ALIBHAI MOHMADBHAI

Versus

KADERKHA NURKHA

Appearance:

MS PJ DAWAWALA for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1
MR VM TRIVEDI for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/03/2000

ORAL JUDGEMENT

1. The plaintiff had gone to the court in the year 1977 for getting the decree for possession on the ground of bonafide requirement and till the year 2000, he could

not get the possession of the premises, though he has succeeded in the courts below on the ground of bonafide requirement.

2. The facts leading to the present revision application are as under.

3. That the respondents herein are the original plaintiffs. They had filed the suit being Regular Civil Suit No.287/77 in the court of Joint Civil Judge (Junior Division) at Bharuch. It is the case of the plaintiffs that the suit premises was rented to the defendant at the monthly rent of Rs.6/- in the year 1956. Subsequently, after providing some additional facilities, rent was increased to Rs.8/- per month. According to the plaintiffs, the defendant was irregular in payment of the rent, and therefore, after terminating his tenancy, arrears of rent was demanded by demand notice. That followed by the aforesaid suit for possession on the ground of arrears of rent as well as on the ground of bonafide requirement of the plaintiffs. It is the case of the plaintiffs that the plaintiff No.2 is an old man and is doing labour work at Bombay and he wants to settle in his native place at Bharuch and that he has no shelter over his head at Bombay. Therefore, on the aforesaid ground of arrears of rent as well as on the ground of bonafide requirement, the aforesaid suit was filed by the plaintiffs against the defendant.

4. The defendant appeared in the suit and filed his written statement at Exh.9. The defendant denied the claim of the plaintiffs for bonafide requirement. The defendant also pointed out that, he has paid the amount and he is not defaulter in payment of rent.

5. The trial court framed various issues at Exh.10 and after recording the evidence and hearing the parties, came to the conclusion that the plaintiffs has failed to prove that the defendant was in arrears of rent for a period of more than six months. However, the trial court decreed the suit by holding that the plaintiff No.2 requires the suit premises for his bonafide use and occupation. After considering the facts and circumstances of the case, the trial court passed partial decree in favour of the plaintiff No.2. The trial court directed the plaintiff No.2 to construct kachcha portion of wall adjoining to the kitchen wall as mentioned in the operative part of the order. Accordingly, the suit of the plaintiffs was partly decreed by passing the partial decree in favour of the plaintiffs.

6. The defendant - tenant carried the matter in appeal by way of Regular Civil Appeal No.184/80 before the District Court at Bharuch. Learned Assistant Judge, Bharuch who heard the said appeal, dismissed the same and the decree of the trial court was confirmed by the Appellate Judge. The defendant - tenant has carried the matter further by filing the present revision application.

7. I have heard the learned advocate Ms.Davawala for the petitioner - tenant and Mr.V.M.Trivedi for the respondents. It is sorry state of affairs that the plaintiff No.2 could not get the fruits of his decree which was passed on the ground of bonafide requirement. His suit is of the year 1977 and about 23 years have passed. It has come in the evidence that, the plaintiff No.2, at the relevant time, was very old man. His vision is very weak and he was totally unemployed. Under these circumstances, he wanted to settle in his native place at Bharuch. It is the case of the plaintiff No.2 that, he had returned to Bharuch in the year 1974 and had requested the defendant to hand over the possession of the suit premises and he was promised by the defendant that, he will vacate the suit premises within short period. At that time, he had stayed at the house of his sister, but she has refused to allow him to stay for a longer period and ultimately he returned back to Bombay. Since there was no one to look after him, he met with an accident and sustained fracture on his leg bone. According to the plaintiff No.2, he is in helpless condition at Bombay and he has no house, but he lives on the footpath near passage of a building. Considering the aforesaid evidence of the plaintiff No.2, it was found by the trial court that the plaintiff No.2 has proved his bonafide need and his need cannot be said to be mere imaginary. The trial court found that the plaintiff No.2 has led sufficient evidence that, he has become old and infirm, and that he is retired from services at Bombay in 1975 and that he has no residential accommodation at Bombay and that he has lost his legs. The aforesaid observations have been made by the learned trial Judge in paragraph 12 of his judgment. At that point of time, the age of the plaintiff No.2 was found to be of 65 years. The Appellate Judge also confirmed the said findings about bonafide need of the plaintiff No.2, and therefore, there is a concurrent finding of fact by both the courts below that the plaintiff No.2 required suit premises for his bonafide use and occupation. In my view, if the facts of this case did not constitute bonafide requirement, there can hardly be any case of bonafide requirement of a person. If, a person of an

advance age who is alone wants to come back to his native after his retirement and if it is found that, he is residing on footpath, it cannot be said that his need is not bonafide. In the present case, it cannot be said that, need of the landlord is imaginary or that there is a lack of bonafide on the part of such landlord. In the facts and circumstances of the case, therefore, the plaintiff No.2 has proved his requirement as most genuine and bonafide and accordingly I accept the findings of the courts below on the aforesaid fact about the bonafide requirement of the plaintiff No.2.

8. Section 13(1)(g) of the Bombay Rent Act deals with the case where the landlord requires the premises for his bonafide requirement. Sub-section 2 of the aforesaid section provides as under.:

"No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only."

It has been found by the courts below that the financial condition of the defendant was also not very sound. It is found that the defendant's family consisting of three members including himself, wife and married daughter and who is not found to be residing with her husband at his house. The defendant of course is also of an advance age of 75 years. Considering the totality of the evidence and considering the facts, the trial court passed the partial decree and asked the plaintiff No.2 to construct kachcha portion wall adjoining to the kitchen wall and ota wall near the second floor taking second door in his possession of the portion, that is, the portion admeasuring 6 x 7 feet as described in detail in paragraph 29(2) of the order. The defendant was asked to hand over back the suit premises touching the kitchen and in between the second floor and ota admeasuring 7 x 6 feet length.

9. The trial court found that, passing the partial

decree for possession can to some extent solve the problem of the plaintiff No.2 for his residence during his last days of life. Ultimately, partial decree was passed to that extent by the trial court and the appellate court confirmed the aforesaid partial decree which was found to be the only solution in the facts and circumstances of the case. As a matter of fact, as stated earlier, the plaintiff No.2 has proved successfully his requirement, and therefore, he was entitled to get the decree for possession of the entire suit premises. However, it was found by the courts below that the partial decree would meet with the ends of justice, only part of the premises was given to the plaintiff No.2 and that is how equity was balanced by the courts below. It was argued before the lower appellate court that since the plaintiff No.2 is used to reside on footpath, there is nothing wrong, if he continues to do so far rest of the life, when he has not shown any plan as to why he wants to come back to his native place. The aforesaid argument was absolutely inhumane. It is shocking that even a person of 65 years of age has not been able to secure the possession and had to continue to reside on footpath, even after a period of 23 years after filing the suit. An attempt is required to be made to dispose of the suit for bonafide requirement at an earliest and if the proceedings are prolonged for more than two to three years, then there would hardly any remedy for the plaintiff by which his immediate need of the premises can be fulfilled. It is hoped that, the courts will take such matters for expeditious hearing and will make proper attempt to see that the suit for bonafide requirement may be put to an end at an earliest, even the age of the parties, their financial conditions, etc. all are required to be considered and considering the same, top priority is required to be given to such cases.

10. In view of what is stated above, I do not find any substance in this civil revision application. Civil Revision Application is accordingly dismissed. Rule discharged. Interim relief shall stand vacated forthwith.

(pathan)